

STATE OF MARYLAND

MARYLAND DEPARTMENT OF THE ENVIRONMENT

Shari T. Wilson, Secretary

BILL NO: Senate Bill 1017

COMMITTEE: Education, Health, and Environmental Affairs

POSITION: Oppose

TITLE: Marine Contractors – Licensure and Regulation – Wetland Permits and Authorizations

BILL ANALYSIS: Senate Bill 1017 (SB 1017) requires the Maryland Department of the Environment (MDE) to create, implement, and administer a new marine contractor licensing program. The Bill also exempts certain projects carried out by licensed marine contractors; provides special handling of permit applications submitted by licensed marine contractors, including a reduction in permit application fees; and limits marine contractor liability.

POSITION AND RATIONALE: The Department opposes SB 1017. The proposed legislation affects statutory provisions enacted by the 2008 General Assembly before these provisions have been fully implemented and their effectiveness tested by the regulated community, environmental organizations, or the Department.

Marine Contractor Licensing Program

The creation of the new marine contractor licensing program proposed by SB 1017 requires MDE to: (1) Adopt regulations for the implementation and administration of the licensing program; (2) Investigate marine contractors that submit applications for licenses; (3) Issue marine contractor licenses and provide for the renewal of issued licenses, including approved continuing education courses; and (4) Maintain a roster of licensed individuals and firms. The administration of the new program would be funded by a \$500 license application fee and a \$300 license renewal fee, which would partially support a new, dedicated position to manage the program.

During the 2008 session, the Maryland General Assembly enacted House Bill 1253, amending the jurisdiction of the Maryland Home Improvement Commission (MHIC). As a result of the legislation, marine contractors, who construct shore erosion control projects and/or piers, are required to

hold a home improvement contractor license from MHIC. While the Department has encouraged the creation of a marine contractors licensing program in the past, it is important to understand whether a new, independent program administered by MDE would provide any additional benefits over the recently imposed MHIC requirements. Consequently, it is important for the Department, the MHIC, and the newly organized Maryland Marine Contractor Association to evaluate the existing program before imposing any new requirements.

Additionally, the Bill's penalty provisions are much too soft on marine contractors. Violations of the license provisions are punishable only criminally and as a misdemeanor with only a \$1,000 fine. More importantly, the Bill would impose a penalty of up to \$25,000 on *homeowners* who hire unlicensed marine contractors, but only \$1,000 on the contractor himself.

The Bill would also immunize licensed marine contractors "from civil liability arising from a project to stabilize natural shoreline if the project was issued a permit by the Department under this title." Since there is no environmental basis for exempting marine contractors from liability for violating wetlands licenses, this provision of SB 1017 is too broad.

Wetlands and Waterways Regulatory Program

First, there is some ambiguity as to whether SB 1017 applies to work within both tidal wetlands and nontidal wetlands. The Department believes that the types of projects identified in the Bill are normally carried out in tidal wetlands by marine contractors. If the intent is to capture activities in nontidal wetlands, the scope of the Bill should reflect the type of activities actually performed by marine contractors in order to avoid any confusion.

Second, Senate Bill 1017 makes significant changes to the Wetlands and Waterways Regulatory Program. The Bill establishes special handling procedures for licensed marine contractors that are not afforded to any other professional group, such as registered professional engineers or professional wetland scientists, submitting applications for review and approval by MDE. More importantly, these special handling features not only establish processing time frames that conflict with existing law, especially with regard to public notice requirements, but also dramatically reduce the revenue generated by permit application fees enacted by the legislature last year.

The Bill would require MDE to “exempt a licensed marine contractor from the permitting requirements for a project that the Department designates for exemption based on the negligible impact the project will have on the wetlands in which the project is located.” This provision would create a class of projects that, if carried out by a licensed marine contractor, would be exempt from the need to obtain a license. While the intent of this provision is to eliminate permitting delays being experienced by marine contractors, the provision may produce contrary results. The federal general permit negotiated by MDE with the U.S. Army Corps of Engineers (Corps) provides for “State-only” review of minimal impact activities. Under the Maryland State Programmatic General Permit, MDE issues both the State and federal authorizations upon the successful completion of the application process, generally with no interaction between the applicant and the federal government. The creation of a State exemption, however, means that an activity regulated under Section 404 of the federal Clean Water Act or Section 10 of the federal River and Harbors Act, will now be reviewed by the Corps.

Finally, SB 1017 would eliminate the distinction between minor and major projects for applications submitted by marine contractors, stating that a licensed marine contractor must be charged a “single, flat application fee of \$750.” MDE’s analysis of this proposed change to the fee schedule results in the revenue loss of \$807,000. The Bill also prevents MDE from collecting an application fee if the Department ultimately denies the project. Consequently, MDE could not assess an application fee for projects that generally require the most work and documentation, a denial. An application fee should be assessed regardless of the result of the application review process.

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